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LAFAYETTE, IN 47901

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**DEC 14 2009**

In re Patent No. 6,861,248  
Issue Date: March 1, 2005  
Application No. 10/056,063  
Filed: January 28, 2002  
Patentee(s) Dale M. Clark et al

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition under 37 CFR 1.378(c), filed August 25, 2009, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. **Any petition for reconsideration of this decision must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f).** No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified patent issued on March 1, 2005. Therefore, the grace period in 35 U.S.C. § 41(b) for paying the 3½ maintenance fee expired on March 1, 2009.

35 U.S.C. § 41(c)(1) authorizes the Commissioner to accept a delayed maintenance fee payment within twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) if the delay is shown to have been unintentional, and authorizes the Commissioner to accept a delayed maintenance fee payment at any time if the delay is shown to have been unavoidable. Thus, 35 U.S.C. § 41(c)(1) does not authorize the Commissioner to accept a delayed maintenance fee payment later than twenty-four (24) months after the expiration of the six-month grace period specified in 35 U.S.C. § 41(b) unless the delay is shown to have been unavoidable.

Office record show \$1300 was received with petition on August 25, 2009. The 3½ maintenance fee is \$490 and the Surcharge after expiration is \$1640. If petitioner desire reconsideration of this decision, petitioner must submitted \$2530 (\$490 for 3½ maintenance fee; \$1640 Surcharge after expiration; and \$400 petition for reconsideration). The \$1300 received on August 25, 2009 may be applied, which leaves a balance of \$1230.

The petition under 37 CFR 1.378(c) received on August 25, 2009 is signed by one (1) applicant, M. Clark Dale. **Communications received at the USPTO must be signed by all of the applicants.** 37 CFR 1.33(b) states:

“Amendments and other papers filed in the application must be signed by: (1) An attorney or agent of record appointed in compliance with § 1.34(b); (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a); (3) The assignee of record of the entire interest, if there is an assignee of record of the entire interest; (4) An assignee of record of an undivided part interest, and any assignee(s) of the remaining interest and any applicant retaining an interest, if there is an assignee of record of an undivided part interest; or (5) All of the applicants (§§ 1.42, 1.43 and 1.47) for patent, unless there is an assignee of record of the entire interest and such assignee has taken action in the application in accordance with §§ 3.71 and 3.73.”

The petition for reconsideration must include the lacking item(s) noted above, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner.


Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
                                    Commissioner for Patents  
                                    Alexandria, VA 22313-1450

By facsimile:              (571) 273-8300  
                                    ATTN: Office of Petitions

By hand:                     Customer Service Window  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to Irvin Dingle at (571) 272-3210.

  
Irvin Dingle  
Petitions Examiner  
Office of Petitions